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700 Thirteenth Street, NW  
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Washington, DC 20005-3960

EXAMINER
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BELLINGER, JASON R

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAUL EDWARD DENNEY

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Appeal 2015-002142  
Application 13/681,035  
Technology Center 3600

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Before JEFFREY A. STEPHENS, ERIC C. JESCHKE, and  
BRENT M. DOUGAL, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) from the Examiner's Final Office Action ("Final Act.") rejecting claims 10–12 and 16–19. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> The real party in interest is identified as Lincoln Global, Inc., which is identified as a subsidiary of Lincoln Electric Holdings, Inc. App. Br. 3.

*Claimed Subject Matter*

Claim 10, reproduced below, illustrates the claimed subject matter.

10. A welded wheel structure, comprising:  
a first wheel section having a first web portion;  
a second wheel section having a second web portion,  
where each of said first and second web portions are contacting  
each other and each of said first and second web portions have  
the same length; and  
a continuous hermetically sealed weld joint which welds  
said first web portion to said second web portion, such that said  
weld joint passes through an entire thickness of said first web  
portion and penetrates 5 to 100% of said thickness of said second  
web portion;  
wherein said weld joint is positioned radially around a  
center of said welded first and second sections,  
wherein said weld joint is an autogenous weld joint, and  
wherein said first web portion has a web length between a  
hub portion positioned radially inward from said first web  
portion and an angled portion positioned radially outward from  
said first web portion, and said weld joint is positioned on the  
first web portion 10 to 80% of the web length inward from said  
angled portion.

*Rejections*

Claims 10, 12, and 16–19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Jones (US 1,566,017, issued Dec. 15, 1925) and Copley et al. (US 7,824,775 B2, issued Nov. 2, 2010). Final Act. 2–4.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Jones, Copley, and Yelistratov et al. (US 2009/0320288 A1, published Dec. 31, 2009). Final Act. 4–5.

Claims 10–12, 16–18, and 19 stand provisionally rejected on the ground of nonstatutory double patenting over claims 9, 10–16, and 17,

respectively, of Application No. 13/681,085 (“the ’085 Application”). Ans. 6.<sup>2</sup>

Claims 10–12 and 16–19 stand provisionally rejected on the ground of nonstatutory double patenting over claims 12–22 of Application No. 13/269,319. Final Act. 7–8.

## ANALYSIS

### *The Obviousness Rejections*

We have reviewed the Examiner’s rejections in light of Appellant’s arguments (App. Br. 11–25; Reply Br. 5–13). We concur with Appellant’s argument (App. Br. 18) that the Examiner does not present sufficient findings or reasoning to explain why one of ordinary skill in the art would have made the weld at central portions 18 and 20 of Jones a hermetically sealed weld.

The Examiner finds Jones does not disclose that the weld forms a hermetic seal, but finds one of ordinary skill in the art would have formed Jones’s weld as a hermetic seal “for the purpose of rendering the wheel airtight.” Final Act. 2. As Appellant points out, however, Jones has a rim 34, which is a separate piece welded to the rest of the wheel, and which interfaces with the tire. *See* App. Br. 14–15. Although Jones does not expressly state that the rim forms a sealed cavity for a pneumatic tire, we agree with Appellant (*id.*) and the Examiner (Final Act. 10; Ans. 7–8) that one of ordinary skill in the art would understand Jones’s rim to form a sealed

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<sup>2</sup> In the Final Action, claim 19 was provisionally rejected on the ground of statutory double patenting over the ’085 Application (Final Act. 6), but that rejection is withdrawn and modified in the Answer (Ans. 6).

cavity for a pneumatic tire. Accordingly, Jones's wheel would be airtight because of the rim, and a weld further to the center of the rotational axis of the wheel at central portions 18 and 20 would not need to be hermetically sealed in order to make the wheel airtight. *See* App. Br. 14–15. Thus, the Examiner's stated reason for modifying Jones is not supported by the evidence.

In the Answer, the Examiner states that it is irrelevant whether the weld would make the wheel airtight, and finds that “[t]he autogenous welding process disclosed by Jones is fully capable of producing a hermetically sealed weld, therefore any weld joint of Jones could be hermetically sealed, regardless of its location.” Ans. 8. We agree with Appellant that the mere possibility that contact seam welding *could* produce a hermetically sealed weld is insufficient to show that Jones's weld is inherently hermetically sealed. Reply Br. 10. “Inherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981) (quoting *Hansgirg v. Kemmer*, 102 F.2d 212, 214 (CCPA 1939)); *see also In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993) (quoting *Oelrich* in context of obviousness rejection).

Absent either sufficient evidence that Jones's weld on the web portions of the wheel is inherently hermetically sealed or articulated reasoning with rational underpinning for modifying the weld to be hermetically sealed, we do not sustain the rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over Jones and Copley. Independent claim 19 similarly recites “a continuous hermetically sealed weld joint which welds said first web portion to said second web portion.” Because the

rejections of all claims on appeal rely on the Examiner's finding that Jones teaches a hermetically sealed weld joint between the web portions, or that one of ordinary skill in the art would have had reason to modify Jones to meet the disputed limitation, we also do not sustain the rejections of claims 11, 12, and 16–19.<sup>3</sup>

*The Double Patenting Rejections*

Appellant does not appeal the provisional double patenting rejections. App. Br. 10.<sup>4</sup> Nonetheless, we decline to reach the provisional double patenting rejections because they are currently the only remaining rejections, in view of our reversal of the rejections under § 103(a). *See Ex parte Moncla*, 95 USPQ2d 1884 (BPAI 2010) (precedential).

DECISION

We reverse the Examiner's decision to reject claims 10, 12, and 16–19 under 35 U.S.C. § 103(a) as unpatentable over Jones and Copley. We reverse the Examiner's decision to reject claim 11 under 35 U.S.C. § 103(a) as unpatentable over Jones, Copley, and Yelistratov. We do not reach the provisional double patenting rejections.

REVERSED

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<sup>3</sup> Because this issue is dispositive as to all claims on appeal, we need not reach additional issues raised by Appellant's arguments.

<sup>4</sup> We note that the applications upon which the provisional double patenting rejections were based have been abandoned.